

10 July 2006

Civilian Personnel

**Damage Claims of the United States Forces in Germany Against
Local National Employees**

***This regulation supersedes USAREUR 690-62, 15 November 1984.**

For the Commander:

JAMES C. BOOZER, SR.
Colonel, GS
Deputy Chief of Staff

Official:



DARRELL L. BRIGHT
Regional Chief Information
Officer - Europe

Summary. This regulation establishes policy and procedures for local national (LN) employee liability in cases of damage, destruction, or loss of U.S. Forces' property. This regulation has been revised to update the policy and procedures for handling damage, destruction, or loss of U.S. Forces' property caused by LN employees.

Applicability. This regulation applies to LN personnel—

- Employed by the U.S. Forces in Germany under the Collective Tariff Agreement for the Employees of the Sending States Forces in Germany, except for personnel employed by the United States Air Forces in Europe and its tenant activities. The term "U.S. Forces" includes all activities serviced by the Civilian Human Resources Agency, Europe Region, and the Army and Air Force Exchange Service, Europe (AAFES-Eur).
- Paid from appropriated or nonappropriated funds.
- In civilian support agencies in Germany.

NOTE: References to civilian personnel advisory centers and the Civilian Personnel Operations Center do not apply to AAFES-Eur. The Commander, AAFES-Eur, may use internal procedures for meeting the intent of this regulation except where AAFES-Eur is specifically mentioned.

Supplementation. Organizations will not supplement this regulation without USAREUR G1 (AEAGA-CL) approval.

Forms. AE and higher level forms are available through the Army in Europe Publishing System (AEPUBS).

Records Management. Records created as a result of processes prescribed by this regulation must be identified, maintained, and disposed of according to AR 25-400-2. Record titles and descriptions are available on the Army Records Management Information System website (<https://www.arims.army.mil>).

Suggested Improvements. The proponent of this regulation is the USAREUR G1 (AEAGA-CL, DSN 375-2521). Users may suggest improvements to this regulation by sending DA Form 2028 to the USAREUR G1 (AEAGA-CL), Unit 29351, APO AE 09014-9351.

Distribution. C (AEPUBS).

CONTENTS

1. Purpose
2. References
3. Explanation of Abbreviations and Terms
4. Responsibilities
5. General Principles of Employee Liability
6. Limitation on Liability
7. Procedures
8. Collection of Money
9. Preclusive Time Limits
10. Relief from Liability
11. Admonishments and Disciplinary Actions

Figures

1. Sample Memorandum to Employee of Preliminary Investigation Results
2. Sample Memorandum to Employee of Report of Survey Investigation
3. Sample Memorandum to Employee of Determination of Pecuniary Liability

Glossary

1. PURPOSE

This regulation provides policy and procedures for determining liability of local national (LN) employees when it is reported that they have caused damage, destruction, or loss of U.S. Forces' property.

2. REFERENCES

- a. *Bundespersonalvertretungsgesetz* (German Personnel Representation Law).
- b. NATO Status of Forces Supplementary Agreement.
- c. AR 25-400-2, The Army Records Information Management System (ARIMS).
- d. AE Pamphlet 690-60, Tariff Agreements That Apply to Persons Employed by the U.S. Forces in Germany (English Translation).
- e. DA Form 2028, Recommended Changes to Publications and Blank Forms.

3. EXPLANATION OF ABBREVIATIONS AND TERMS

The glossary defines abbreviations and terms.

4. RESPONSIBILITIES

a. Commanders or activity chiefs will—

(1) Initiate investigations to determine if LN employees are liable for damage, destruction, or loss of U.S. Forces property.

(2) Inform LN employees of their entitlement to seek assistance from the local works council.

(3) Inform LN employees of the results of liability investigations.

b. The report of survey (ROS) officer will—

(1) Investigate the LN employee's liability.

(2) Make recommendations to the commander or agency chief.

(3) Provide a copy of the ROS to the servicing civilian personnel advisory center (CPAC) and the staff judge advocate.

5. GENERAL PRINCIPLES OF EMPLOYEE LIABILITY

a. If during the performance of official duties, an LN employee causes damage, destruction, or loss of U.S. Forces' property, the U.S. Forces may claim reimbursement if both of the following are true:

(1) The employee acted in breach of duty, unlawfully, and culpably.

(2) The action on the part of the employee caused the damage, destruction, or loss of the property.

b. The employer must prove (in detail) that the employee was negligent. "Negligence" is defined as failure to exercise the degree of care required in the performance of official duty (for example, if a reasonable and prudent employee under similar circumstances would not have committed the act or failure to act). The employee is obligated to demonstrate that the damage, destruction, or loss was caused during the performance of official duties.

c. An employee is considered to have acted unlawfully if grounds for justifying his or her action do not exist.

d. The question of whether or not an employee has acted culpably will be reviewed and determined on the basis of the definitions above.

6. LIMITATION ON LIABILITY

When the employee is performing official duty, liability is limited as follows:

a. If the employee is responsible for damage, destruction, or loss because of intent or gross negligence, the employee is fully liable. In case of risk-prone work, this provision will apply only if damage was caused intentionally or by major negligence. Intent may be assumed only if the employee anticipated the dereliction of duty and the damage, destruction, or loss of U.S. Forces' property and accepted it or intended to cause it. Intentional violation of instructions is insufficient evidence to charge the employee liable if intent to cause damage, destruction, or loss is not verifiable.

b. Gross negligence may be assumed for a severe and inexcusable act or omission of duty and the employee, in applying diligence, had not thought of the simplest and most obvious considerations. In the event of gross negligence, a reduction of liability may occur (for example, if an employee was entrusted with expensive equipment that is damaged so severely during an accident that the full liability replacement cost would have ruinous consequences for the employee based on the employee's monthly salary).

c. If damage, destruction, or loss occurs because of moderate negligence, the settlement will normally be split between the employer and the employee.

(1) Pro-rata liability does not automatically mean that the employee is 50-percent liable. Employers and employees will be liable for a percentage of the claim settlement based on the circumstances that caused the damage, destruction, or loss.

(2) In pro-rata cases, employers must consider the cause of the damage, destruction, or loss by applying the principles of ethics and reasonableness to determine the amount of compensation the employee must pay. Employers should use the following factors to determine liability:

- (a) Type of work.
- (b) Degree to which work is risk-prone.
- (c) Degree of fault.
- (d) Cost of damage, destruction, or loss.
- (e) Employee's monthly income.
- (f) Employee's position in the organization.
- (g) Employee's length of service.
- (h) Employee's age.
- (i) Employee's work history and conduct.
- (j) Employee's family situation.
- (k) Heavy workload.
- (l) Work under heavy time pressure.

d. The employer alone will bear the costs of damage, destruction, or loss in cases of ordinary or simple negligence. “Ordinary negligence” is defined as minor or easily excusable neglect of duty that can occur to employees during day-to-day business operations.

e. Although German law does not prescribe a limit, the financial reimbursement from LN employees to the U.S. Forces is limited to 1 month’s gross salary. This limit, however, is not applicable if the employee willfully caused property damage, destruction, or loss of U.S. property through a criminal act.

7. PROCEDURES

a. If evidence proves that the employee caused the damage, destruction, or loss by at least a moderate level of negligence, the commander or agency chief will—

(1) Inform the employee of the preliminary results of the investigation (fig 1).

(2) Use the daily exchange rate to establish the cost of the damage, destruction, or loss in euros and dollars.

(3) Give the employee the opportunity to comment on the investigation.

(4) Determine if the employee acknowledges fault and agrees to pay the repair or replacement cost. The employee’s decision must not be influenced by supervisory pressure of any kind.

(5) Inform the employee of the entitlement to seek the involvement of the local works council and, if applicable, the severely handicapped employee representatives group.

b. If the employee does not acknowledge liability and refuses to voluntarily pay a settlement, the commander or agency chief will—

(1) Immediately initiate preparation of an ROS.

(2) Inform the employee in writing of the entitlement to seek assistance from the works council and, if applicable, the severely handicapped employee representatives group. Send a copy of the ROS investigation memorandum (fig 2) to the local works council and, if applicable, the severely handicapped employee representatives group.

c. If the ROS officer concludes that the employee is responsible for the damage, destruction, or loss of U.S. Forces’ property and should be held liable because of dereliction of duty, the commander or agency chief will—

(1) Send the ROS to the servicing CPAC and to the servicing staff judge advocate to review German labor law concerning a damage, destruction, or loss claim against the LN employee.

(2) Inform the employee in writing of the investigation results (fig 3).

8. COLLECTION OF MONEY

The money claimed by the U.S. Forces will be withheld from the employee’s salary by the *Lohnstelle ausländische Streitkräfte (LaS)* (Foreign Forces Payroll Office) in monthly payroll deductions within legal limits according to the following provisions:

a. If the employee voluntarily accepts the financial obligation, the employing organization must send the employee’s written approval to the *LaS*. This statement will serve as the authorization to collect the money.

(1) If the employee requests to pay by installments, the payment amount must be calculated so that the settlement period does not exceed 1 year.

(2) To allow the employee to pay by installments, the approval must include the condition that if the employee is terminated for any reason before the claim is settled, the employee must immediately pay the remainder of the settlement before processing out of the organization.

b. If the employee disagrees with paying the settlement and the employer's decision to hold the employee liable is based only on the results of the ROS, the employing organization must—

(1) Send written approval for the collection of money to the *LaS*. The approval must include a reference to the ROS and a description of the facts and circumstances as rationale for collecting the money.

(2) Provide the *LaS* with information about the employee to help the *LaS* collect the money.

c. If employment has already ended and collecting the money by payroll deduction is not possible, the employing organization, in coordination with the CPAC, will request that the *LaS* initiate a writ of execution against the employee. The request must not be made if the—

(1) Unpaid amount of the claim is less than €600.

(2) Employee no longer lives in Germany.

(3) Location of the employee is unknown.

9. PRECLUSIVE TIME LIMITS

a. Collection of money against an employee's will is not possible if—

(1) Three months have passed since the commander or agency chief learned the facts of the incident.

(2) An ROS was not initiated.

(3) The employee was not informed of liability.

b. If the employee requested the assistance of the local works council, the commander or agency chief must initiate the codetermination procedure according to sections 69 and 76(2)9 of the *Bundespersonalvertretungsgesetz* (German Personnel Representation Law) before the 3-month period (a(1) above) expires. In these situations—

(1) The 3-month time limit will be suspended, but the U.S. Forces' entitlement to compensation will not be forfeited.

(2) The commander or agency chief must immediately inform the employee of the final decision and, if applicable, initiate collection of the settlement at the conclusion of the codetermination procedure.

10. RELIEF FROM LIABILITY

The commander or agency chief may decide not to hold the employee liable for damage, destruction, or loss at any time during the process of identifying liability. To relieve the employee of liability, the commander or agency chief will send a written notification to the employee and the local works council if the employee requested works council assistance.

11. ADMONISHMENTS AND DISCIPLINARY ACTIONS

The provisions and procedures of this regulation neither suspend nor prevent the processing of admonishments or disciplinary actions against the employee who caused damage, destruction, or loss to U.S. Forces' property.

(agency letterhead)

(office symbol)

(date)

MEMORANDUM FOR (name of employee)

SUBJECT: (title of damage, destruction, or loss)

1. This memorandum is to notify you that an investigation of the damage, destruction, or loss incident that occurred on (date) has been conducted. The investigation results are as follows:
 - a.
 - b.
 - c.
2. It has been determined that you are responsible for the damage, destruction, or loss because of a dereliction of duty. Therefore, we intend to hold you liable for the repayment of € (amount).
3. Please inform the POC (para 4) within the next 5 days whether you agree with this determination and how you intend to settle the payment. You may pay the settlement in a maximum of 12 monthly installments. You also have the right to ask the local works council to take part in the process under the codetermination procedure to protect your interests in this matter.
4. The POC is (name, DSN XXX-XXXX, e-mail: xxxxx, or fax DSN XXX-XXXX).

(signature of supervisor)

Receipt acknowledged.

(signature of employee and date)

Figure 1. Sample Memorandum to Employee of Preliminary Investigation Results

(agency letterhead)

(office symbol)

(date)

MEMORANDUM FOR (name of employee)

SUBJECT: Damage, Destruction, or Loss Claim

1. There is reason to believe that you are responsible for the damage, destruction, or loss of (*list property*) on (*date*) because of a dereliction of duty. You have already rejected a settlement by mutual consent in the form of a voluntary payment to settle the damage, destruction, or loss.
2. Based on the above, a report of survey investigation will be initiated. After the report is completed and reviewed, the agency chief will determine whether and to what amount you will be held liable for the damage, destruction, or loss. You will be sent a written explanation of the findings.
3. You have the right to request the local works council to take part in the process under the codetermination procedure to protect your interests in this matter. Please inform this agency within next 5 days whether or not you will exercise this right. If you do, the preclusive time limit of 3 months for the implementation of the damage, destruction, or loss claim will be suspended for the duration of the codetermination procedure.
4. The POC is (*name, DSN XXX-XXXX, e-mail: xxxxx, or fax DSN XXX-XXXX*).

(signature of agency chief)

Figure 2. Sample Memorandum to Employee of Report of Survey Investigation

(agency letterhead)

(office symbol)

(date)

MEMORANDUM FOR (name of employee)

SUBJECT: Damage, Destruction, or Loss Claim—Report of Survey

1. The investigation of the circumstances leading to the damage, destruction, or loss of (*list property*) on (*date*) revealed that you caused the damage, destruction, or loss due to a dereliction of duties. The investigation results are as follows:

a.

b.

c.

2. The damage, destruction, or loss claim of the U.S. Forces amounts to a total of € (*amount*). The *Lohnstelle ausländische Streitkräfte* (Foreign Forces Payroll Office) will deduct this amount from your pay. If you would rather pay by installments, please notify the POC (para 3) within 5 days after you receive this memorandum.

3. The POC is (*name, DSN XXX-XXXX, e-mail: xxxxx, or fax DSN XXX-XXXX*).

(signature agency chief)

Figure 3. Sample Memorandum to Employee of Determination of Pecuniary Liability

GLOSSARY

SECTION I ABBREVIATIONS

AAFES-Eur	Army and Air Force Exchange Service, Europe
AE	Army in Europe
AEPUBS	Army in Europe Publishing System
AR	Army regulation
ARIMS	Army Records Information Management System
CPAC	civilian personnel advisory center
DA	Department of the Army
fig	figure
HQ USAREUR/7A	Headquarters, United States Army, Europe, and Seventh Army
<i>LaS</i>	<i>Lohnstelle ausländische Streitkräfte</i> (Foreign Forces Payroll Office)
LN	local national
NATO	North Atlantic Treaty Organization
ROS	report of survey
U.S.	United States
USAREUR	United States Army, Europe

SECTION II TERMS

agency chief

All management representatives responsible for managing an agency, regardless of whether or not they have delegated personnel authority.

local national employee

Personnel employed under German labor laws as modified by the NATO Status of Forces Supplementary Agreement, Article 56.

report of survey

An investigation conducted by the U.S. Forces in case of damage, destruction, or loss of U.S. property.